

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NYKCOOL A.B.,

Plaintiff,

-against-

12 Civ. 5754 (LAK)

PACIFIC FRUIT, INC., et al.,

Defendants.  
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### ORDER

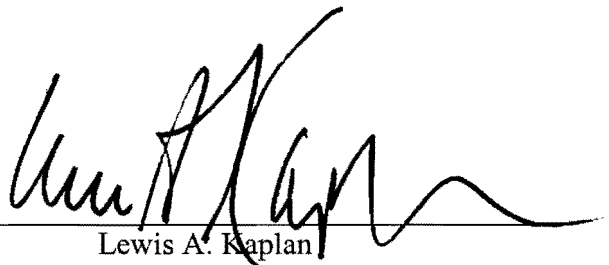
LEWIS A. KAPLAN, *District Judge*.

Plaintiff's objections to the report and recommendation of Magistrate Judge Andrew J. Peck, dated November 9, 2012, are overruled, as there was no error of fact or law. Defendants' motion to dismiss plaintiff's fourth claim for relief [DI 16] is granted to the extent that the claim is dismissed in all respects save insofar as it seeks to recover for attorneys' fees and related expenses expended in attempting to collect the underlying judgment. It is denied in all other respects.

It of course is true, as plaintiff's argue, that efforts to collect on a judgment, the collection of which has been rendered difficult by alleged wrongdoing, often will not have as neat and definitive an end as the conclusion of a bankruptcy of a judgment debtor, at which point a loss attributable to collection frustration efforts may be quantified definitively. But this is not a situation in which plaintiff has nothing more than a theoretical possibility of someday realizing on theoretical claims that someday might be brought against theoretical fraudulent transferees. Plaintiff is actively pursuing claims in this very action against very real alleged fraudulent transferees based on what appears to be at least some evidence that very real fraudulent transfers occurred. At least in this posture, the case is governed by the authorities relied upon by the magistrate judge.

SO ORDERED.

Dated: December 4, 2012

  
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Lewis A. Kaplan  
United States District Judge